

<div>CITY OF SA'N JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 8/28/02 Item: 4.a.
	File Number CP01-10-091
	Application Type Conditional Use Permit
	Council District 3
	Planning Area Central
	Assessor's Parcel Number(s) 467-08-001
PROJECT DESCRIPTION	
Completed by: John Davidson	
Location: Southeast corner of E. Julian Street and N. Twenty-Eighth Street	
Gross Acreage: 0.54	Net Acreage: 0.54
Net Density: N/A	
Existing Zoning: HI Heavy Industrial	Existing Use: Warehouse with existing building-mounted wireless antennas
Proposed Zoning: No change	Proposed Use: Proposed 45' tall freestanding wireless communications monopole and an associated ground-mounted equipment shed
GENERAL PLAN	
Completed by: JED	
Land Use/Transportation Diagram Designation Heavy Industrial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING	
Completed by: JED	
North: Us 101 Freeway on-ramp	Public right-of-way
East: US 101 Freeway On-ramp	Public right-of-way
South: Industrial	HI Heavy Industrial
West: Industrial	HI Heavy Industrial
ENVIRONMENTAL STATUS	
Completed by: JED	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY	
Completed by: JED	
Annexation Title: East San Jose	Date: 12/01/1911
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION	
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input checked="" type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____ Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation
APPLICANT/OWNER	DEVELOPER
James C. Hill Trust 12009 Finn Lane Los Altos Hills, CA 94002 Walnut Creek, CA 94596	Ellen Magnie Cingular Wireless 4420 Rosewood Drive Pleasanton, CA 94588

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works

None received

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

See attached letters from James C. Hill (subject property owner) and Leah Hernikl (consulting planner for Cingular Wireless) regarding use of the project site.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Cingular Wireless, is proposing a new freestanding 45' tall wireless communications monopole at the northwest corner of the subject site. The subject property is located at the southeast corner of E. Julian and N. Twenty-Eighth Streets, on a 0.54 gross-acre site in the HI Heavy Industrial Zoning District. The property is bounded by Heavy Industrial land uses on the south and west sides, and by the Highway 101/Julian Street freeway interchange to the north and east sides.

The property is currently developed with a 36' tall industrial building that already has a previously approved building-mounted antenna on the roof (File #CP96-11-107). The building-mounted antenna is the same height as the proposed monopole.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA).

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Heavy Industrial.

ANALYSIS

Staff is recommending denial of the proposed monopole based on the proposal's lack of conformance with the City Council's Land Use Policy, No. 6-20 for Wireless Communication Facilities (attached), and based on the fact that a building-mounted wireless facility can, and already has been, installed on the subject site.

A building-mounted wireless antenna is considered a superior design alternative to a monopole. Accordingly, the Zoning Ordinance is structured procedurally to encourage building-mounted antenna proposals and discourage new monopoles. As an incentive, building-mounted wireless antennas can be permitted administratively with a Permit Adjustment, with significant savings in time and money. Freestanding monopoles, conversely, are subject to a Conditional Use Permit, and subject to exhaustive review and a public hearing and appeal process.

Council Policy 6-20 specifically states that, "*New freestanding monopoles should not be implemented where building-mounted or co-located facilities are feasible and would reduce visual impacts.*" However, a building-mounted wireless facility already exists on the subject site, and based on the existing installation a second building-mounted wireless antenna appears to be feasible. The main impediment to placement of another building-mounted facility appears to be the owner of the site (see attached letter), and not any physical, spatial, or other real limitation associated with the site or structure.

The owner has entered into a lease agreement with the applicant based on, "the clear understanding that I would not allow any communications equipment to be installed on the roof of my building. The roof is metal and the physical stress caused by people walking across it undermines the roof's integrity and causes leaks." However, in conjunction with installation of a building-mounted wireless antenna, the roof structure could be strengthened and reinforced to accommodate the additional weight of a second building-mounted antenna and wear from additional technicians on the roof. Staff considers this the preferred alternative for the site.

Council Policy 6-20 calls for an alternatives analysis when new freestanding monopoles are proposed. The policy states, "*Applications for new freestanding monopoles should include a thorough analysis of the potential for co-location or building-mounted alternatives as a means of reducing visual clutter. At a minimum, this analysis should identify the location of all existing monopoles within a quarter mile of the proposed site; provide an explanation of why co-location has not been proposed at each of those sites; and assess the potential for building-mounted alternatives.*"

The applicant has provided an alternatives analysis (attached), which analyzes the alternative locations but does not provide a reason, outside of the property owner's unwillingness, why a second building-mounted antenna is infeasible at the subject site. Staff believes a building mounted alternative is feasible at the site, and is the preferred alternative, per Council Policy 6-20.

In the alternatives analysis, the applicant indicates that the proposed monopole is a slim-line design, which was not contemplated when the Council Policy 6-20 was drafted. The applicant notes, "The City's policies were also developed in a time when technology did not offer the slim-line monopole as a possibility. The slim-line monopole would merely add a simple vertical element in an area, which is characterized by older industrial development. The slim-line is a visually superior option to the older-style monopoles with an array of antennas extending outward from the pole." The fact remains that a building mounted antenna would be visually preferable over any type of monopole, and the applicant and property owner should pursue such an alternative.

CONCLUSION

The Council Policy for Wireless Communications Facilities creates a hierarchy of acceptable types of wireless antennas, with building-mounted or co-located antennas as the preferred option when feasible. Freestanding monopoles are discouraged unless there are no available alternatives. At the subject site, an additional building mounted antenna is an available alternative, save for the resistance of the property owner. Although the applicant is taking advantage of the latest technology to minimize the visual clutter caused by the proposed monopole, a building-mounted antenna is the preferred option and is feasible on the subject site, and therefore the subject application should be denied. The applicant should file an application for a Permit Adjustment for a building mounted wireless antenna, which staff can approve administratively.

RECOMMENDATION

Planning staff recommends that the Planning Commission **deny** the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The project site has a designation of Heavy Industrial on the adopted *San Jose 2020 General Plan Land Use/Transportation Diagram*.
2. The project site at the southeast corner of E. Julian Street and N. Twenty-Eighth Street is located in the HI Heavy Industrial Zoning District.
3. Wireless communications antennas are a permitted use in the HI Heavy Industrial Zoning District.
4. The proposed project conforms to the setback requirements of the HI Heavy Industrial District.
5. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
6. The site is currently developed with a 36' tall warehouse building.
7. The roof of the existing building is currently developed with a building-mounted wireless communications antenna.
8. The applicant has submitted an application for a Conditional Use Permit to allow a 45' tall freestanding monopole and an associated equipment shed in the northwest corner of the site.
9. The City Council's Land Use Policy for Wireless Communication Facilities states that new freestanding monopoles should not be implemented where building-mounted or co-located facilities are feasible and would reduce visual impacts.
10. The installation of a second building mounted wireless antenna on the roof of the warehouse appears to be a feasible alternative to the proposed monopole. The applicant has presented no physical or spatial reasons that a second building mounted wireless antenna would not be feasible.

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the General Plan Land Use /Transportation Diagram designation of Heavy Industrial.
2. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
3. The proposed project does **not** conform to City Council's Land Use Policy for Wireless Communication Facilities in that a building mounted wireless antenna appears to be a feasible alternative to the proposed monopole.

A report of findings has been prepared in compliance with the requirements of Section 20.100 of the Zoning Ordinance and is made a part of this Resolution **denying** a Conditional Use Permit.

FINDINGS

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are **not** mutually compatible and aesthetically harmonious, in that:
 - a. The proposed use could be accommodated using a building-mounted antenna instead of a freestanding monopole.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are **not** compatible with and aesthetically harmonious with adjacent development or the character of the neighborhood, in that:
 - a. The proposed monopole would contribute to additional visual clutter in the area, which could be minimized through a building-mounted antenna.
3. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that, under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are **not** sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. No compensating design measures are proposed to reduce the visual impacts of the proposal.

In the event that the Planning Commission chooses to approve the subject permits, Planning staff recommends that the Planning Commission **approve** the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The project site has a designation of Heavy Industrial on the adopted *San Jose 2020 General Plan Land Use/Transportation Diagram*.
2. The project site at the southeast corner of E. Julian Street and N. Twenty-Eighth Street is located in the HI Heavy Industrial Zoning District.
3. Wireless communications antennas are a permitted use in the HI Heavy Industrial Zoning District.
4. The proposed project conforms to the setback requirements of the HI Heavy Industrial District.
5. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
6. The site is currently developed with a 36' tall warehouse building.
7. The roof of the existing building is currently developed with a building-mounted wireless communications antenna.
8. The applicant has submitted an application for a Conditional Use Permit to allow a 45' tall freestanding monopole and an associated equipment shed in the northwest corner of the site.
9. The City Council's Land Use Policy for Wireless Communication Facilities states that new freestanding monopoles should not be implemented where building-mounted or co-located facilities are feasible and would reduce visual impacts.

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the General Plan Land Use /Transportation Diagram designation of Heavy Industrial.
2. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
3. The proposed project **conforms** to City Council's Land Use Policy for Wireless Communication Facilities.

A report of findings has been prepared in compliance with the requirements of Section 20.100 of the Zoning Ordinance and is made a part of this Conditional Use Permit.

FINDINGS

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious, in that:
 - a. The proposed use **cannot** be accommodated using a building-mounted antenna instead of a freestanding monopole.

2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are *not* compatible with and aesthetically harmonious with adjacent development or the character of the neighborhood, in that:
 - a. The proposed monopole would **not** contribute to additional visual clutter in the area, which could be minimized through a building-mounted antenna.
3. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that, under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are *not* sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. The proposed monopole is a slim-line design, which minimizes visual clutter.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways exist on site to provide access to the site without interfering with off-site circulation.
6. This site has a designation of Heavy Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram and this application is consistent with this designation.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth **IS HEREBY GRANTED**. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Johnny Walker, SF-943-01," dated June 6, 2001, last revised September 21, 2001 on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. The approval authority may impose substantive conditions designed to decrease sanitary sewage associated with any land use approval.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside the property.
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Building Division (2)

Engineering Services

Leah Hernikl, Ruth and Going, Inc., P.O. Box 26460, San Jose, CA 95159

207-10/JED:jb